

AMENDMENTS TO THE DRAWINGS:

The attached sheets of drawings include the Examiner's requested changes to FIGS. 2-9. Specifically, Applicants have amended FIGS. 2-9 to include descriptive labels for the previously empty boxes within them. The added labels are consistent with the description in Applicants' specification discussing those figures.

Applicants attach Replacement Sheets including the corrected figures and Annotated Sheets showing where changes have been made.

REMARKS

Applicants submit this Reply in response to the non-final Office Action mailed November 25, 2008. Before this response, claims 23-44 were pending, of which claims 23 and 33 were independent. In this response, Applicants have amended claims 23-33 and 44. Support for these amendments can be found in the originally-filed specification at, for example, page 7, lines 22-27. No new matter has been added. As a result, claims 23-44 are currently pending, of which claims 23 and 33 are independent.

In the non-final Office Action,¹ the Examiner took the following actions:

- (a) objected to the drawings;
- (b) objected to claim 23 for an informality;
- (c) rejected claims 23-32 and 44 under 35 U.S.C. § 101 for being directed to non-statutory subject matter;
- (d) rejected claims 23-25, 27-28, 32-35, 37-38 and 42 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2004/0042398 ("Peleg") in view of U.S. Patent No. 6,873,600 ("Duffield");
- (e) rejected claims 26, 36, and 43-44 under 35 U.S.C. 103(a) as being unpatentable over Peleg in view of Duffield and further in view of U.S. Patent No. 7,356,584 ("Yip"); and
- (f) objected to claims 39-41 as being dependent upon a rejected base claim, but indicated these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

¹ The Office Action contains a number of statements characterizing Applicants' disclosure, including the claims, and the related art. Regardless of whether any such statement is specifically addressed herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Applicants respectfully traverse the pending objections and rejections and request reconsideration of the present application in view of the foregoing claim amendments and the following remarks.

Objections to the Drawings

The Examiner objected to the drawings under 37 C.F.R. 1.83(a) "because they fail to number or [provide] a brief description of each box as described in the specification." Office Action, p. 2. Applicants note that the Office Action does not specifically point out which drawings or which features therein provide the basis for the objection. Nonetheless, to further prosecution, Applicants have amended FIGS. 2-9 to include descriptive labels for boxes within them, consistent with their description in the specification. In view of these amendments to the drawings, Applicants submit that the drawings objections are moot.

Objection to Claim 23

Claim 23 stands rejected for the informality of reciting "at at" in the claim. In response, claim 23 has been amended to recite "[a] method for evaluating traffic dispersion [[at]] associated with at least one exchange." Applicants respectfully submit that the informality has been removed, and therefore request that the objection to claim 23 be withdrawn.

Rejection of Claims 23-32 and 44 Under 35 U.S.C. § 101

The Office Action rejected claims 23-32 for failing to provide physical structure to perform the method steps. In response to this rejection, and without conceding the Examiner's arguments regarding alleged non-statutory subject matter, Applicants have amended independent claim 23 to recite, in part, "incrementally generating traffic

quantums representative of said traffic at an evaluation module" and "producing, at the evaluation module, a distribution of said traffic quantums over said links in said plurality according to said set of routing rules." These recitations, among others in the pending claims, directly tie the claims to a physical structure, namely an evaluation module. As a result, Applicants respectfully request withdrawal of the rejection of claims 23-32 under Section 101.

The Office Action also rejected claim 44 for being directed to non-statutory subject matter. In response, claim 44, as presently amended, recites, among other things, a "computer-readable medium storing instructions for execution by a processing system" It is well established that "a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory." M.P.E.P. § 2106.01(I) (emphasis added). Moreover, "[w]hen functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized." M.P.E.P. § 2106.01. Applicants respectfully submit that the computer-readable medium recited in claim 44 complies with the statutory requirements of Section 101.

Rejection of Claims 23-25, 27-28, 32-35, 37-38, and 42 Under 35 U.S.C. § 103(a)

Applicants request reconsideration and withdrawal of the rejection of claims 23-25, 27-28, 32-35, 37-38, and 42 under 35 U.S.C. § 103(a) over Peleg in view of Duffield. The Examiner has not properly resolved the *Graham* factual inquiries, the proper

resolution of which is the requirement for establishing a framework for an objective obviousness analysis. See M.P.E.P. § 2141(II), citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966), as reiterated by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 U.S.P.Q.2d 1385 (2007).

While Applicants have amended independent claims 23 and 33 to further demonstrate the differences between the applied references and the claims, Applicants maintain that the Examiner has not properly ascertained the differences between the rendered claims and the references, at least because he has not interpreted the references and considered both the rendered claims and the prior art as a whole. See M.P.E.P. § 2141(II)(B).

Representative independent claim 23 has been amended to recite, among other things, "an evaluation module independent from a plurality of exchanges and nodes of the communications network" and "producing, at the evaluation module, a distribution of said traffic quantum over said links in said plurality according to said set of routing rules, the distribution thus obtained being statistically representative of the dispersion of said incoming traffic over said plurality of links at said exchange." Applicants respectfully submit that Peleg fails to teach or suggest at least this features of amended independent claims 23.

Peleg generally discloses "[an] improved apparatus and method for reducing traffic congestion [in a communications network]." Peleg, ¶ [0050]. To that end, Peleg discloses:

A data structure suitable for monitoring the traffic over each of at least one link . . . in a network is provided. The data structure typically comprises, for each switch and each link within each switch, a software structure for storing at least . . .

. traffic samples taken while monitoring traffic over the relevant switch and link, variables for storing the computed traffic load parameters for each switch and link, and variables for storing the reserved capacity

. . .

Monitoring the traffic can be done in a number of ways. For example, it is possible to sample the traffic at regular intervals Conventional switches include a packet counter for each link which counts each packet as it goes over the relevant link. The term "sampling" typically refers to polling the link's packet counter to in order to determine how many packets have gone over that link to date.

Id. at ¶¶ [0134]-[0137].

In other words, Peleg merely discloses monitoring network traffic over each link at the switch associated with each respective link. More specifically, as shown above, the "data structure[s] suitable for monitoring the traffic over each of at least one link . . . in a network [are] provided [] . . . for each switch and each link within each switch," *id.* at ¶ [0134], and these "software structure[s] [are] for storing at least . . . traffic samples taken while monitoring traffic over the relevant switch and link." *Id.* Monitoring traffic comprises "polling the link's packet counter to in order to determine how many packets have gone over that link to date," *id.* at ¶ [0137], where the "switches [each] include a packet counter for each link which counts each packet as it goes over the relevant link." *Id.* Thus, Peleg appears to disclose that the data structures that poll the packet counter of a switch are housed in the switch itself, instead of disclosing "an evaluation module independent from a plurality of exchanges and nodes of the communications network" and "producing, at the evaluation module, a distribution of said traffic quantum over said links in said plurality according to said set of routing rules, the distribution thus

obtained being statistically representative of the dispersion of said incoming traffic over said plurality of links at said exchange,” as recited by Applicants’ amended independent claim 23.

The Office Action’s application of Duffield does not cure the above-noted deficiencies of Peleg. The Office Action applied Duffield for its alleged disclosure of “incrementally generating traffic quantum representative of said traffic.” Office Action, p. 5. Even if the Office Action’s characterization of Duffield is correct, which Applicants do not concede, Duffield still does not teach or suggest “producing, at the evaluation module, a distribution of said traffic quantum over said links in said plurality according to said set of routing rules, the distribution thus obtained being statistically representative of the dispersion of said incoming traffic over said plurality of links at said exchange,” as recited by Applicants’ amended independent claim 23. Indeed, Duffield appears to generally disclose “a direct method for traffic measurement [in a packet switched network], called trajectory sampling,” Duffield, col. 3, ll. 16-17, which “does not rely on a network model and an estimation of its state and its expected behavior.” Thus, Duffield does not teach or suggest the above-referenced claim elements of Applicants’ amended independent claim 23.

As set forth above, Peleg and Duffield do not teach or suggest the elements of amended independent claim 23 and, consequently, the Office Action has not properly ascertained the differences between the referenced and the rendered claims. Accordingly, no reason has been clearly articulated as to why the claims would have been obvious to one of ordinary skill in the art. Independent claim 33, while different in

scope than claim 23, recites similar subject matter. For at least this reason, independent claims 23 and 33 should be allowable.

Claims 24-25, 27-28, 32, 34-35, 37-38, and 42 depend from one of allowable independent claims 23 or 33 and should be allowable at least due to their dependence from an allowable base claim. Therefore, for at least these reasons, the Examiner should withdraw the 35 U.S.C. § 103(a) rejection of claims 23-25, 27-28, 32-35, 37-38, and 42.

Rejection of Claims 26, 36, and 43-44 under 35 U.S.C. 103(a)

Applicants traverse the rejection of claims 51 and 68 under 35 U.S.C. § 103(a) as being unpatentable over Peleg in view of Duffield and in further view of Yip. A *prima facie* case of obviousness has not been established because among other things, the Office Action has not properly ascertained the scope and content of the cited references as neither Peleg, Duffield, Yip, nor their combination, teaches or suggests each and every feature of Applicants' claims.

Applicants have already established that Peleg and Duffield fail to teach or suggest "an evaluation module independent from a plurality of exchanges and nodes of the communications network" and "producing, at the evaluation module, a distribution of said traffic quantum over said links in said plurality according to said set of routing rules, the distribution thus obtained being statistically representative of the dispersion of said incoming traffic over said plurality of links at said exchange," as required by amended independent claims 23 and 33. Applicants now submit that the Office Action's application of Yip fails to cure the above-noted deficiencies of Peleg and Duffield.

More specifically, the Office Action alleges that Yip "teaches accepting said traffic quantum to be assigned to a given link only if the sum of all the traffic portions assigned to said link is smaller than said load limit set for said link." Office Action, p. 15; *see id.* at pp. 16-17. Even assuming the Office Action's characterization of Yip is correct, which Applicants do not concede, Yip still does not teach or suggest the above-referenced claim element. The cited references, taken either alone or in any reasonable combination, thus fail to teach or suggest all the limitations of claims 23 and 33, which are required by dependent claims 26, 36, and 43-44. Applicants therefore respectfully request the withdrawal of the section 103 rejection of claims 26, 36, and 43-44.

Allowable Subject Matter

Applicants acknowledge with appreciation the Examiner's indication that claims 39-41 are drawn to allowable subject matter. For the foregoing reasons demonstrating the allowability of all the pending claims over the rejection of record, Applicants respectfully decline to amend claims 39-41 at this time.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.


Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: March 24, 2009

By: _____


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**Attachments: Replacement Sheets of FIGS. 2-9
 Annotated Sheets showing changes to FIGS. 2-9**